

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

AARON WAYNE LISKEY,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13238
Trial Court No. 3KN-17-00973 CR

SUMMARY DISPOSITION

No. 0198 — July 7, 2021

Appeal from the Superior Court, Third Judicial District, Kenai,
Anna M. Moran, Judge.

Appearances: Megan R. Webb, Assistant Public Defender, and
Samantha Cherot, Public Defender, Anchorage, for the
Appellant. Diane L. Wendlandt, Assistant Attorney General,
Office of Criminal Appeals, Anchorage, and Clyde “Ed” Sniffen
Jr., Acting Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison,
Judges.

Aaron Wayne Liskey was convicted of second-degree misconduct involving weapons, third-degree misconduct involving weapons, two counts of second-degree misconduct involving a controlled substance, and one count of fourth-degree

misconduct involving a controlled substance.¹ This case arose after a warrant was issued for Liskey's arrest in connection with an unrelated case.

Three Alaska state troopers found Liskey hiding on the second floor of a small cabin. When the troopers reached the top of the stairs, Liskey jumped out the window and fled. The troopers eventually caught up with Liskey and discovered that he was carrying drugs, a large amount of cash, and a pocketknife coated in a substance that appeared to be heroin.

The troopers then returned to the cabin, where they found a partially-open backpack with items that appeared to belong to Liskey, including a cell phone containing selfies of Liskey. The backpack also contained two handguns (a .22 caliber semiautomatic pistol and a .45 caliber revolver), drug paraphernalia, and eighty-seven rounds of .22 caliber ammunition, which was loose at the bottom of the backpack.

The primary focus of this appeal is Liskey's possession of the handguns. The State charged Liskey with two counts of weapons misconduct relating to the pistol and two counts of weapons misconduct relating to the revolver. The jury convicted Liskey of possessing the pistol, but acquitted him of the two counts connected to the revolver. On appeal, Liskey raises two issues related to his convictions for possession of the pistol.

First, Liskey claims that the evidence was insufficient to support his convictions for weapons misconduct because the evidence failed to establish that the pistol belonged to him. When we review a claim of insufficient evidence, we are required to view the evidence (and all reasonable inferences to be drawn from that

¹ AS 11.61.195(a)(1), AS 11.61.200(a)(1), former AS 11.71.030(a)(1)(A) (2017), former AS 11.71.030(a)(1)(C) (2017), and former AS 11.71.050(a)(4) (2017), respectively.

evidence) in the light most favorable to upholding the verdict.² Viewing the evidence in this light, we then determine whether a fair-minded juror could find that the State had met its burden of proof beyond a reasonable doubt.³ Here, the pistol was found in a backpack that contained other items appearing to belong to Liskey, including identification and photographs of Liskey, at a house from which Liskey had just fled. Viewed in a light most favorable to upholding the verdict, this evidence was sufficient to support the conclusion that the pistol belonged to Liskey.

Second, Liskey argues that the jury's verdicts on the four counts of weapons misconduct were inconsistent. The jury convicted Liskey of the two counts of weapons misconduct relating to the pistol, but acquitted him of the two counts of weapons misconduct relating to the revolver. Because the guns were found in the same backpack, Liskey argues that these verdicts are inconsistent. We note that Liskey failed to raise this issue until after the jury was discharged.⁴

In any case, jury verdicts are only inconsistent when they are “‘irreconcilably in conflict,’ meaning ‘necessarily or strictly inconsistent.’”⁵ Here, the critical question at Liskey's trial was whether someone other than Liskey had placed the guns in the backpack after Liskey fled from the troopers. Liskey argued that, because the guns were found near the top of the open backpack and because others in the home handled the backpack after he fled, it was possible that someone else placed the guns in

² *Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012).

³ *Id.*

⁴ *See Miller v. State*, 312 P.3d 1112, 1114 (Alaska App. 2013) (holding that the defendant “forfeited his right to attack the verdicts as being inconsistent, because he did not raise this issue in the superior court before the jury was discharged”).

⁵ *Brown v. Anchorage*, 915 P.2d 654, 660 (Alaska App. 1996) (citing *Davenport v. State*, 543 P.2d 1204, 1207 (Alaska 1975)).

the backpack. But, as we have already discussed, there was evidence from which a reasonable juror could conclude that the backpack belonged to Liskey, and the State argued that there was additional evidence that the .22 pistol was regularly carried in the backpack — namely the eighty-seven rounds of .22 ammunition associated with the pistol found in the bottom of the backpack. Given the presence of the .22 ammunition, a reasonable juror could have concluded beyond a reasonable doubt that the pistol belonged to Liskey, while nonetheless harboring a reasonable doubt as to whether the revolver did as well. We therefore conclude that the jury’s verdicts are not irreconcilably in conflict.

Liskey also argues that his sentence was excessive. We review a claim that a sentence is excessive under the clearly mistaken standard of review.⁶ Liskey was convicted of three class B felonies and one class C felony.⁷ Because Liskey was a third felony offender and the court found an aggravating factor (that Liskey had five or more prior class A misdemeanor convictions),⁸ Liskey faced a maximum composite term of 35 years to serve for his felony convictions.⁹ The court sentenced Liskey to a composite term of 21 years with 15 years suspended, or 6 years to serve. Having independently reviewed the record in this case, we conclude that the sentence is not clearly mistaken.¹⁰

⁶ *McClain v. State*, 519 P.2d 811, 813-14 (Alaska 1974).

⁷ Liskey was also convicted of a class A misdemeanor (fourth-degree misconduct involving a controlled substance) for which he was sentenced to 30 days’ imprisonment.

⁸ *See* AS 12.55.155(c)(31).

⁹ *See* former AS 12.55.125(d)(4) & (e)(3) (2017).

¹⁰ We note that, at sentencing, the trial court made comments suggesting that all of Liskey’s suspended time should be imposed if he violated probation. As the State recognizes, these comments are not binding, nor presumably were they intended to be so, (continued...)

The judgment of the superior court is AFFIRMED.

¹⁰ (...continued)

given that a court must apply the *Chaney* criteria when determining how much suspended time, if any, should be imposed for a probation violation. *See State v. Henry*, 240 P.3d 846, 848-49 (Alaska App. 2010).